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In the Supreme Court of the United States

OCTOBER TERM 1934

No. 901

THE KLAMATH AND MOADOC TRIBES AND YAHOOSKIN Band of Snake Indians, petitioners

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 18) is not yet reported.

JURISDICTION

The judgment of the court below was entered November 5, 1934 (R. 18). On November 24, 1934, petitioners moved for a new trial and to amend the special findings of fact. On November 28, 1934, respondent moved to amend the special findings of fact (R. 18). On April 8, 1935, an order was entered overruling petitioners' motion for a new

trial and allowing in part and overruling in part the motions to amend the findings of fact (R. 18). The petition for a writ of certiorari was filed April 24, 1935. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Court of Claims erred in holding that the jurisdictional Act did not waive the bar of a release given by petitioners and that the claim asserted was without the jurisdiction of the court.

2. Whether the Court of Claims erred in holding that the release was the act of the tribes of the Klamath Reservation and was effective as a surrender of petitioners' rights in or claims to the subject matter covered therein.

3. Whether the court erred in failing to conclude as a matter of law that the release was procured through duress.

STATUTES, TREATIES, AND AGREEMENTS INVOLVED

Treaty of October 14, 1864, 16 Stat. 707. See Finding IV (R. 21).

Act of June 21, 1906, c. 3504, 34 Stat. 325, 368. See Finding X (R. 24).

Act of April 30, 1908, c. 153, 35 Stat. 70, 92. See Finding XII (R. 24, 25).

Act of May 26, 1920, c. 203, 41 Stat. 623. See Finding I (R. 18).

STATEMENT

In 1864 the petitioners held by immemorial possession over 20,000,000 acres of land in what are

now the States of Oregon and California, their title being undisputed (Finding II, R. 21).

By the treaty of 1864 the petitioners ceded all their lands to the United States. Article I of that treaty is in part as follows (Finding IV, R. 21):

> *Provided,* That the following described tract, within the country ceded by this treaty, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians [and] held and regarded as an Indian reservation, * * * and the exclusive right of taking fish in the streams and lakes, included in said reservation, and of gathering edible roots, seeds, and berries within its limits, is hereby secured to the Indians aforesaid: *Provided, also,* That the right of way for public roads and railroads across said reservation is *guaranteed* [reserved] to citizens of the United States.

Under the authority of the Act of June 21, 1906 (c. 3504, 34 Stats. 325, 368), the Secretary of the Interior on August 22, 1906, conveyed to the California & Oregon Land Company 87,000 acres out of petitioners' reservation without the knowledge or consent of petitioners (Finding X, R. 24). The occasion or purpose for this conveyance is not material here.

Thereafter, on November 2, 1907, the Secretary of the Interior sent to the Secretary of the Treasury a tentative draft of a bill appropriating $108,750 to be paid to petitioners as compensation for

the lands so taken. This bill was forwarded by the Secretary of the Treasury to the Speaker of the House of Representatives and by the Act of April 30, 1908, c. 153, 35 Stats. 70, 92, Congress appropriated the sum of $108,750 in payment to petitioners for 86,418.06 acres of land taken as aforesaid from their reservation. The Act is as follows (Finding XII, R. 24):

> That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred and eight thousand seven hundred and fifty dollars, or so much thereof as may be necessary, to pay the Indians of the Klamath agency for the lands conveyed to the California and Oregon Land Company, in accordance with the provisions of the Act of June twenty-first, nineteen hundred and six (Thirty-fourth Statutes at Large, pages three hundred twenty-five and three hundred sixty-eight), said sum to be deposited in the Treasury of the United States to the credit of said Indians and expended for their benefit in such manner and for such purposes as the Secretary of the Interior may prescribe: *Provided,* That this appropriation shall not be effective until said Indians, through the usual channels, shall execute a release of any claims and demands of every kind against the United States for the land involved.

Thereafter the Commissioner of Indian Affairs transmitted a form of release, in the language of

the appropriation Act, to the Superintendent at the Klamath Agency together with the instruction that "This release should be executed in your presence by a majority of the Indians on the reservation and should be certified to by you as the action of such majority" (Finding XIV, R. 25). In 1908 the total population of the Klamath Reservation was 1,038, of whom 640 were adults (287 men and 353 women). The adult males were alone allowed to vote in Indian councils (Finding XV, R. 25).

The Agency Superintendent called the Indians of the reservation to meet on December 5, 1908, for a council for the purpose of considering compliance with the appropriation Act of April 30, 1908, *supra* (Finding XV, R. 25). The council was attended by 200 or more Indians of the reservation. The Superintendent presided and explained the terms of the appropriation Act and what was necessary to be done, before the money would be available. A much larger sum had been recommended by the Superintendent. He was not in accord with the offer of settlement and did or said nothing to mislead the Indians. At this meeting one hundred or more Indians signed the release (Finding XVI, R. 26).

At Yainax, some forty or fifty miles from the general agency there is a subagency. The Indians of this subagency rarely ever attend councils at the general agency headquarters. A meeting was also called of the Indians of the subagency where simi-

lar proceedings were had. As a result of the two meetings 150 male adult Indians on the reservation signed a release (Finding XVII, R. 26), which is as follows (Finding XVIII, R. 26, 27):

> Whereas by an item in the Indian Appropriation Act approved April 30, 1908 (Public, No. 104), there is appropriated the sum of one hundred eight thousand seven hundred and fifty dollars ($108,750.00), or so much thereof as may be necessary to pay the Indians of the Klamath Agency for the land conveyed to the California and Oregon Land Company, in accordance with the provisions of the act of June 21, 1906 (34 Stat. L. 325–368), which sum is to be deposited in the Treasury of the United States to the credit of said Indians and expended for their benefit in such manner and for such purpose as the Secretary of the Interior may prescribe; and
>
> Whereas it is provided in said act—
>
> That this appropriation shall not be effective until said Indians, through the usual channels, shall execute a release of any claims and demands of every kind against the United States for the land involved:
>
> *Now, therefore,* the undersigned, being a majority of the Indians of the Klamath Reservation in council assembled, do hereby relinquish any and all claims and demands of every kind and character which they now have or may hereafter have against the United States for the lands involved.

The release signed as aforesaid was on January 6, 1909, received by the Secretary of the Interior from the Agency Superintendent. The Secretary accepted the release as a sufficient compliance with the appropriation Act of April 30, 1908 (*supra*), and the said sum of $108,750 was placed in the Treasury to the credit of petitioners. No claim has been made by petitioners for additional compensation save and except through the petition filed in this case (Finding XIX, R. 27).

The court below found that the value of this land to the petitioners in 1906, "under the title possessed by them", was $2,980,000 (Finding XI, R. 24). Respondent submits that such a statement is not a proper finding of fact, but is plainly the statement of a conclusion of law. The value placed by the court below on the petitioners' interest in the lands included the merchantable value of the timber thereon, rather than the value of the use of the timber in such a way as would not amount to waste. It was respondent's contention that under the ruling of this Court in *United States v. Cook*, 19 Wall. 591, the Indians had no greater interest in the lands than that of tenants for life.

The jurisdictional Act of May 26, 1920, c. 203, 41 Stats. 623, under which this action was brought, authorized the presentation of "all claims of whatsoever nature * * * for determination of the amount, if any, due said Indians from the United

States under any treaties, agreements, or laws of Congress" or "for the misappropriation of any of the funds of said Indians", or "for the failure of the United States to pay to said Indians any money or other property due."

Section 2 of said Act in part provides:

> That if any claim or claims be submitted to said courts they shall settle the rights therein, both legal and equitable, of each and all the parties thereto notwithstanding lapse of time or statutes of limitation, and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset in such suits or actions, * * *.

The court below held that the jurisdictional Act did not confer upon the court authority to determine the claim and thereupon dismissed the petition as presenting a claim not within the jurisdiction of the court.

ARGUMENT

I

THE CLAIM SUED UPON IS NOT WITHIN THE JURISDICTIONAL ACT

The court below held the claim asserted not to be within the jurisdiction of the court by reason of a settlement agreement entered into by the parties prior to the Act. The position is taken on behalf of petitioners that the jurisdictional Act lifted the bar of estoppel created by the settlement agreement through the following provision:

by the settlement agreement through the following provision:

> * * * and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an off-set in such suits or actions * * *.

Whether it is correct to say that the failure of Section 2 of the jurisdictional Act to waive the effect of the release restricts the jurisdiction of the court or preserves a defense to the United States is immaterial.

With respect to the construction of Acts giving consent that the United States may be sued, this Court has uniformly held that such Acts should be strictly construed, that the subject of the litigation must be gathered from the plain letter of the law, and that jurisdiction will not be enlarged by implication or by giving to the words used in the Act a broader meaning than such words ordinarily have. *United States* v. *Old Settlers,* 148 U. S. 427, 468; *United States* v. *Choctaw, etc., Nations,* 179 U. S. 494, 534; *Blackfeather* v. *United States,* 190 U. S. 368; *Price* v. *United States and Osage Indians,* 174 U. S. 373.

In order that petitioners' position be sustained, it must be held that the words of the Act "any payment * * * upon any claim" are broad enough to include a payment which has been made incident to a settlement agreement and that the language above quoted from the Act forbids the

pleading of the settlement as a defense. The court below correctly held that a "payment * * * upon a claim" is in law different from a settlement and release of a claim (R. 36). To give to these words the broad meaning contended for by petitioners it must necessarily be held that a settlement agreement is to be ignored if a payment was a consideration therefor.

The provision of the Act under discussion, i. e. payment as estoppel, has been used in fifteen other jurisdictional Acts[1] passed since 1920 wherein the courts are authorized to adjudicate claims of the Fort Berthold Indians, the Sioux, the Cherokee, the Seminole, the Creek, the Wichita, the Choctaw and Chickasaw, the Stockbridge, the Delaware, the Kaw, the Chippewa, the Pottawatomie, the Crow, the Assiniboine, and the Shoshone. Many treaties and agreements were made by the United States with these tribes of Indians prior to the passage of the several Acts, whereby for payments made by the United States the Indians' title to lands were obtained and matters of controversy settled. If petitioners' contention is carried to its logical con-

[1] Acts of February 11, 1920, c. 68, 41 Stat. 404; June 3, 1920, c. 222, 41 Stat. 738; March 19, 1924, c. 70, 43 Stat. 27; May 20, 1924, 43 Stat. 133, c. 162; May 24, 1924, 43 Stat. 139, c. 181; June 4, 1924, 43 Stat. 366, c. 249; June 7, 1924, 43 Stat. 537, c. 300; June 7, 1924, 43 Stat. 644, c. 335; February 7, 1925, 43 Stat. 812, c. 148; March 3, 1925, 43 Stat. 1133, c. 459; May 14, 1926, 44 Stat. 555, c. 300; July 2, 1926, 44 Stat. 801, c. 724; July 3, 1926, 44 Stat. 807, c. 734; March 2, 1927, 44 Stat. 1263, c. 250; March 3, 1927, 44 Stat. 1349, c. 302.

clusion, it will mean that Congress has intended that the stipulations of the treaties and agreements with respect to money considerations shall be ignored. It is unbelievable that Congress had such an intention. The court below has well said "that when Congress intends to waive a defense it has left no room to doubt the intention" (R. 35). In the Act approved February 7, 1925, c. 148, 43 Stat. 812, consenting that the Delaware Tribe present claims for adjudication Congress did not consider the language now under discussion sufficient to waive a settlement and thereupon added this provision: "The said Courts shall consider all such claims de novo * * * without regard to any decision, finding, or settlement * * *."

In the case of *Creek Nation* v. *United States* (63 C. Cls. 270), plaintiffs contended that a provision similar to Section 2 of the instant Act permitted the court to ignore a release given in a treaty. The court below held adversely to the contention, and this Court denied certiorari (274 U. S. 751).

Petitioners further argue that the reports of the Committees on Indian Affairs of the House and Senate which recommended the passage of the instant Act show that it was the intent that the Act include claims which had been settled by agreement. Upon a review of these reports it is plain that there is not the slightest indication of an intention that the committees recommended the passage of an Act with such purpose. It appears from the report of the House Committee (H. Rept.

672, 66 Cong., 2d Sess. Vol. 2, Cong. Doc.), which was referred to in the report of the Senate Committee (Sen. Rept. No. 548, 66 Cong., 2d Sess., Cong. Doc.), that there was a controversy with respect to the meaning and scope of the settlement agreement of 1901 which the Indians desired to have adjudicated. The claim of the Indians before the Congress was that they had lost 1,082,880 acres of land by reason of an erroneous survey; that the settlement agreement of 1901 was intended to cover payment for only 621,824 acres; and that it had been represented to them at the time the agreement was signed that the Government would later on settle with them for the remainder of their lands. The House Committee recommended that the Indians be permitted to present this claim which would involve the construction of the agreement, and thereby determine whether the agreement of 1901 accomplished a cession or relinquishment of lands in excess of 621,824 acres.

II

A MAJORITY OF THE MALE ADULT MEMBERS OF THE PETITIONING TRIBES, BY SIGNING A RELEASE, COULD SURRENDER PROPERTY RIGHTS BELONGING TO THE TRIBES WITHOUT THE AUTHORIZATION OF A GENERAL COUNCIL OF THE MEMBERS OF THE TRIBES

It then remains to determine whether the release was validly executed.

The Act of April 30, 1908, c. 153, 35 Stat. 70, 92, appropriating the sum of $108,750 in payment for the lands taken, provided that the appropriation shall not be effective until "said Indians, through

the usual channels, shall executed a release of any claims and demands of every kind against the United States for the land involved" (Finding XII, R. 25).

The Commissioner of Indian Affairs acting for the Secretary of the Interior transmitted a form of release in the language of the statute to the Superintendent of the Klamath Agency with the instruction that "this release should be executed in your presence by a majority of the Indians on the reservation and should be certified to by you as the action of such majority" (Finding XIV, R. 25).

On January 6, 1909, the Secretary of the Interior received from the Agency Superintendent a release signed by 150 adult male Indians of the reservation (Finding XVIII, R. 26). Thereupon the Secretary of the Interior accepted said release as a sufficient compliance with the provisions of the Act of April 30, 1908 (Finding XIX, R. 27).

In the early days treaties became binding on an Indian tribe when signed on its behalf by the chieftain or headman. In later years, especially with the Five Civilized Tribes, the tribes were permitted to execute contracts in the manner prescribed by the laws of the tribal governments, but in no instance has it been decided that tribal laws or tribal customs shall overcome the political power of the Government to declare the method to be employed by the tribes in the execution of contracts with respect to tribal property or tribal rights. This rule was announced in the case of *Lone Wolf* v. *Hitchcock*, 187

U. S. 553, and there has been no departure therefrom.

The expression "through the usual channels" as used in the appropriation Act was intended to govern the *modus operandi* of both parties to the transaction. That is to say, it was intended that the Executive Department of the Government which has jurisdiction of Indian Affairs should act upon the part of the United States in presenting the offer and in procuring the release and that the will of the Indians should be expressed in the manner determined to be the usual manner. The acceptance of the release signed by 150 male adults by the Secretary of the Interior was a determination by the officer of the Government that the release had been executed as required by the statute. As held in the *Lone Wolf* case, *supra,* the power of Congress to deal with the Indians is plenary. It directed in this case only that the money should not be available "until said Indians, through the usual channels, shall execute a release." Assuming that the phrase "usual channels" means the manner usually employed by the Indians to execute their documents, it is to be assumed that the Secretary of Interior, the Commissioner of Indian Affairs, and the Agency Superintendent adopted the "usual channels." No evidence was presented by the plaintiffs below to show that the method adopted was not the proper one. Cf. *Pueblo of Santa Rosa* v. *Fall,* 273 U. S. 315, 318. No finding

of fact was asked for. We must conclude that the method of execution was in accord with custom.

When a statute delegates the carrying out of its provisions to one of the Executive Departments, the interpretation of the statute by such Department will be given great weight by the courts. *United States* v. *Moore,* 95 U. S. 760, 764; *Robertson* v. *Downing,* 127 U. S. 607, 614; *United States* v. *State Bank,* 6 Pet. 29, 40; *Jacobs* v. *Prichard,* 223 U. S. 200, 214.

Petitioners do not make claim that a vote of a general council in favor of accepting the offer of Congress would have complied with either alleged tribal custom, the requirements of the appropriation Act, or the instructions of the Secretary of the Interior.

The cases cited on behalf of petitioners do not support their contention. The Pueblo of Santa Rosa was a body corporate (*Lane* v. *Pueblo of Santa Rosa,* 249 U. S. 110, 112), consequently its laws and customs relating to the disposal of its property were upheld. The case cited by petitioners, *Pueblo of Santa Rosa* v. *Fall* (Brief, p. 16), would have been entirely different and fallen under the ruling in *Lone Wolf* v. *Hitchcock, supra,* had the United States become the grantee, and in the manner as prescribed by a law of Congress.

So with the Choctaws, the United States recognized their laws and customs with respect to the disposition of tribal property only insofar as their

laws and customs did not conflict with the laws of the United States.

The record fails to show that the release was obtained or executed by any other method than "through the usual channels." The will of the majority of the tribe could not have been expressed in a more positive manner.

III

THE RELEASE WAS NOT SHOWN TO HAVE BEEN OBTAINED UNDER DURESS

Petitioners cite as error the failure of the court below to hold that the release was signed under duress. The court below did not find any fact upon which duress may be predicated.

In its opinion the court below stated that some fifty Indian witnesses testified that the Superintendent of the Agency stated to the Indians in substance "that if they did not accept the $108,750.00 and execute the release in question, they would lose both land and money—they would get nothing" (R. 39). But the court did not find that such a statement, or any other statement of similar import, was made, and holds, as to this and other elements of duress, that the record fails to establish the charge (R. 41). It was found, however, that "the Superintendent was not in accord with the amount appropriated to compensate the Indians, and he neither did nor said anything to mislead the assembly" (Finding XVI, R. 26).

The record fails to show duress.

CONCLUSION

This case was fully, fairly, and carefully considered by the Court of Claims. It is respectfully submitted that the petition for writ of certiorari fails to establish error of law on the part of the court below and that it should be denied.

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